



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 10-974**

**Released: May 27, 2010**

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST  
FOR WAIVER FILED BY THE TOWNSHIP OF WAYNE, NEW JERSEY  
TO IMPLEMENT NEW, MULTI-SITE, TRUNKED AND CONVENTIONAL PUBLIC SAFETY  
COMMUNICATIONS SYSTEMS USING ITS EXISTING FREQUENCY ASSIGNMENTS IN THE  
TELEVISION CHANNEL 14, 15 AND 19 BANDS (470-476, 476-482, 500-506 MHz)**

**File Nos. 0003959144 and 0003959145**

**Comment Date: June 14, 2010**

**Reply Comment Date: June 28, 2010**

The Public Safety and Homeland Security Bureau seeks comment on the above-captioned applications and waiver request, as amended, filed on September 8, 2009, by the Township of Wayne, New Jersey (Wayne, or the Township).<sup>1</sup> Wayne seeks waiver relief pursuant to Section 1.925 of the Commission's rules<sup>2</sup> "to implement a new seven-channel, four-site, P25 trunked system, and a two-channel, four-site, conventional system" by reusing its existing frequency assignments in the TV Channels 14, 15, and 19 bands at the new transmitter sites.<sup>3</sup> Specifically, the Township would use its frequency assignments in TV Channels 14 and 15 for trunked operations and its frequency assignments in TV Channel 19 for conventional operations.

TV Channel 19 is allocated to the private land mobile service (PLMR) in the Philadelphia, PA urbanized area, and base stations may be authorized within 80 kilometers of the geographic center of the cities listed in the rules.<sup>4</sup> Because Wayne is located more than 80 kilometers from Philadelphia, Wayne requests a waiver of Section 90.305(a) of the Commission's rules<sup>5</sup> to build new sites that would operate on its frequency assignments in the TV Channel 19 band.<sup>6</sup> Wayne also requires waiver of Section

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<sup>1</sup> See File Nos. 0003959144 and 0003959145 (filed Sept. 8, 2009, amended Oct. 14, 2009) and attached Supplemental Statement and Waiver Request (Waiver Request). See also Incumbent Station and Contour Studies attached to the Waiver Request (Technical Study).

<sup>2</sup> 47 C.F.R. § 1.925.

<sup>3</sup> Waiver Request at 1. See Frequency Information pages on FCC 601 Main Form.

<sup>4</sup> See 47 C.F.R. §§ 90.303, 90.305.

<sup>5</sup> 47 C.F.R. § 90.305(a).

<sup>6</sup> See *id.* Wayne notes that its existing station operating on Channel 19 band frequencies, WIL599, "was granted based on a waiver of Sections 90.305(a) and 90.307(d), granted 08/17/1993." Waiver Request at 5. We note that Wayne is within 80 kilometers of New York, NY/NE NJ and does not require a waiver of Section 90.305(a) with respect to new sites that would operate on frequencies in the TV Channel 14 and 15 bands.

90.307(d) of the Commission's rules<sup>7</sup> because its proposed TV Channel 15 operations are short-spaced less than 145 kilometers to adjacent TV Channel 16 Station WNEP-TV,<sup>8</sup> and its TV Channel 19 operations are short spaced to adjacent TV Channel 18 Station WMBC-DT. Finally, Wayne seeks waiver of Section 90.313(c) of the Commission's rules<sup>9</sup> because distances for locations one and four of the proposed frequency, 472.1500 MHz are short-spaced less than 64 kilometers to co-channel incumbent PLMR stations.<sup>10</sup>

Wayne "currently operates on nine 'T-Band' channels under call signs: WPYW893, KZV273, WQEK857, WPSH811, and WIL599," and "[a]ll of the channels operate in the conventional, non-trunked mode."<sup>11</sup> Wayne states that it "is currently using an antiquated mix of radio equipment and frequencies that makes interoperability impossible."<sup>12</sup> Wayne concludes that "the new system will provide both needed coverage and interoperability between all public safety agencies."<sup>13</sup>

In support of its waiver request, Wayne submitted a Memorandum of Understanding with Mountain Broadcasting Corporation, licensee for TV Station WMBC-DT.<sup>14</sup> The Township also obtained letters of concurrence from the four short-spaced co-channel incumbent PLMR Stations, call signs WPXT615, WQJG517, WIJ458 and WIM583.<sup>15</sup> Finally, Wayne submitted TSB-88 studies with respect to adjacent channel incumbent PLMR stations, and in all cases neither the incumbents nor Wayne would receive more than five percent reduction in calculated service area reliability, in accordance with the Land Mobile Communications Council Consensus.<sup>16</sup>

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<sup>7</sup> 47 C.F.R. § 90.307(d).

<sup>8</sup> Wayne notes that its own Station WPSH811 "was granted based on a waiver of Section 90.307(d), granted May 1, 2001, to allow land mobile and associated mobile units to operate less than 145 km from affected television station WNEP." Waiver Request at 3-4. Wayne contends that "no waiver of Section 90.307(d) should be required" with respect to WNEP since it has vacated its analog allotment in TV Channel 16 as a result of the digital television transition and has moved to a different channel for its digital operations. *See* File No. 0003959145, attached "Response to Return Letter Dated October 2, 2009, File Number 0003959145, Wayne, Township of." We note that 47 C.F.R. § 90.307(e) is still in effect, which requires PLMR operations to protect certain television stations.

<sup>9</sup> 47 C.F.R. § 90.313(c).

<sup>10</sup> *See* Waiver Request at 3-5. *See also* Technical Study at attachment 5.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *See* File No. 0003959144, attached Memorandum of Understanding, signed by Mayor Christopher P. Vergano, Wayne Township, and Joon S. Joo, President, Mountain Broadcasting Corporation (dated July 20, 2009).

<sup>15</sup> Wayne's proposed short-spaced frequencies include 472.1500, 476.4500, 501.0625 and 500.8125 MHz. *See* File No. 0003959144, attached Letter from Kenneth Kersch, Information Manager, South Brunswick Township (Feb. 27, 2009) (WIJ458) and Letter from Division of Police, Township of Marlboro to Lt. Wayne Lougheed, Wayne Police Department (March 23, 2009) (WIM583); File No. 00039591445, Letter from Martin Horvath, Chief of Police, Borough of Jamesburg, New Jersey (March 3, 2009) (WQJG517), and Letter from Richard F. T., System Engineer, Borough of Spotswood, New Jersey (March 12, 2009) (WPXT615).

<sup>16</sup> *Id.* at 3-4. *See* Incumbent Station and Contour Studies attached to the Waiver Request (Technical Study). *See also* Letter from Larry A. Miller, President, Land Mobile Communications Council to Daniel B. Phythyon, Esq. Acting Chief, Wireless Telecommunications Bureau (dated Sept. 10, 1997). The Land Mobile Communications Council Consensus provides that an application shall not be certified if an applicant causes or receives unacceptable interference of more than five percent reduction of the calculated service area reliability. *See id.*, attached Frequency Selection Procedures, 12.5 kHz Offset Assignments at 470-512 MHz, at 2.

As a part of the analysis under the Commission's waiver criteria, we also seek comment on whether the 700 MHz public safety band would provide a viable alternative, particularly in light of the recent vacating of the band by broadcasters as part of the digital television transition.<sup>17</sup> While Wayne already operates on TV Channel 19 band frequencies, nonetheless, we request comment on the effect on television broadcasters of the Township's proposed expanded use of its frequencies in this band for public safety. Such an effect could be based either on decreasing the potentially available spectrum for broadcast use in areas beyond Wayne, or on increasing the chance that a future broadcast use may require the Township to modify or terminate its waiver-based use if the waiver is granted on a secondary basis to broadcast use. In this regard, we seek comment on whether Wayne could construct the new trunked and conventional systems and improve interoperability by using frequencies in the 700 MHz public safety band, rather than upgrade using its T band frequencies.

We further note that the Commission requires private land mobile radio licensees in 150-174 MHz and 450-512 MHz to transition from 25 kHz to 12.5 kHz technology by no later than January 1, 2013.<sup>18</sup> As we noted above, Wayne holds five licenses in the 470-512 MHz band; call signs WPYW893, KZV273, and WIL599 are currently operating in wideband mode, while call signs WQEK857 and WPSH811 are currently operating in narrowband mode. Should the Commission consider the applicant's current progress in achieving this requirement or other measures of spectrum efficiency when determining whether or not the public interest supports Wayne's expanded use of the T Band under the waiver standard?<sup>19</sup>

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this *Public Notice*. All comments and reply comments should reference the subject Waiver Request and the DA number indicated on this *Public Notice*. Comments may be filed: (1) electronically by accessing the applicant's file number(s) in the Commission's Universal Service Licensing System (ULS),<sup>20</sup> or (2) by filing paper copies.

- Electronic Filers: Pleadings may be submitted electronically as follows:

From the ULS website at <http://wireless.fcc.gov/uls/>, begin the process of submitting a pleading by clicking on the "ULS Pleadings" link in the menu on the lower left side of the ULS web page. The link will take you to the "*Pleading Information*" screen for "Non-docketed Pleadings" where you select "Reply" in the drop-down window for the type of pleading and then enter the pleadings filer information.

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<sup>17</sup> The digital television transition concluded on June 12, 2009. See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

<sup>18</sup> See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

<sup>19</sup> See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

<sup>20</sup> See "Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings," *Public Notice*, 21 FCC Rcd 424 (WTB 2006). See [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-06-125A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf).

Completion of the contact information is optional. Upon completion of this screen, please note the instructions for the filing: “*Pleadings must be dated and must include a signature, in this instance an electronic signature, and the address and phone number of the signing party.*”<sup>21</sup> Click on “CONTINUE.”

The second step is to complete the *File Numbers/Call Signs* screen. Click if the pleading pertains to a File Number or Call Sign and enter the File Number or Call Sign. Please note that you must enter a File Number or Call Sign to continue. If the pleading pertains to multiple applications or licenses, you must enter each File Number or Call Sign as appropriate. After clicking the “SUBMIT” button, the screen will update to show all the File Numbers/Call Signs associated with the pleading. At this time, you may delete selected File Numbers/Call Signs from the page before continuing.

The third step is to complete the *Attach File* screen to attach the pleading document. Use the drop down box to select Pleading or Confidential Pleading. The “BROWSE” button opens a file upload window where you will locate and select your pleading file. The Description field allows you to enter a brief description for the pleading. Click the “ADD ATTACHMENT” button to upload your pleading. You may submit up to thirty files for each pleading but each file must be smaller than 10 MB in size. You also have the opportunity to delete any selected file from the pleading.

Finally, to complete your electronic pleading submission, click on the “SUBMIT PLEADING” button and the *Confirmation* screen will be displayed. The *Confirmation* screen will display your Confirmation Number as well as your entered pleadings information. You may print this page for your records by selecting the Print Page link at the top of the page and have the option of submitting another pleading or returning to the ULS website by selecting a link at the bottom of the page.

The ULS Application and License Search results will display pleadings under the ADMIN tab when a comment or reply comment has been filed. Users can view the pleading by clicking on the link for the specific comment or reply comment in the Description field. The general public will not be able to view confidential pleadings.

For additional information or assistance on how to file a comment or reply comment or other relevant pleading, you may visit the Web at <http://esupport.fcc.gov>. You may also call the FCC ULS Customer Support Center at (877) 480-3201 and select option 2, or (888) 225-5322 and select Option 2, or (717) 338-2888. For TTY, please call (717) 338-2824. Assistance from the FCC ULS Customer Support Center is available between the hours of 8 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls to FCC ULS Customer Support Center are recorded.

- Paper Filers: Parties who choose to file by paper must submit an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room

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<sup>21</sup> See 47 C.F.R. Part 1.

TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** The Commission's former filing location at 236 Massachusetts Avenue, NE is permanently closed.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

The application(s), waiver request, and comments and reply comments can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the Waiver Request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room CY-A257, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its web site, <http://www.bcpweb.com>, by email at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Lisa Williams, RIC, (202) 418-1352.

Because of the policy implications and potential impact of this proceeding on persons not party to the Application, it is in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a) and 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed, but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Mr. David Siehl of the Policy Division, Public Safety and Homeland Security Bureau at (202) 418-1313 (voice), (202) 418-7233 (tty), or via e-mail to [David.Siehl@fcc.gov](mailto:David.Siehl@fcc.gov).

By the Chief, Policy Division, Public Safety and Homeland Security Bureau.

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